

AMENDMENT UNDER 37 C.F.R. § 1.111
U.S. APPLN. NO. 09/919,800
ATTORNEY DOCKET NO. Q65594

REMARKS

Applicant thanks the Patent Office for acknowledging Applicant's claim to foreign priority, and for indicating that the certified copy of the priority document, French Patent Application No. 0010590 dated August 11, 2000, has been made of record in the file.

Applicant thanks the Patent Office for initialing the references listed on the PTO-1449 form submitted with the Information Disclosure Statement filed on August 2, 2001, thereby confirming that the listed references have been considered.

Claims 1-19 have been examined on their merits.

Applicant herein editorially amends claims 1, 8-11, 14 and 17. The amendments to claims 1, 8-11, 14 and 17 were not made for reasons of patentability, do not narrow the literal scope of the claims and do not implicate an estoppel in the application of the doctrine of equivalents.

The Patent Office objects to claims 2, 4, 6 and 8-10 as being dependent upon a rejected base claim. Applicant thanks the Patent Office for indicating that claims 2, 4, 6 and 8-10 would be allowed if rewritten in independent form. However, instead of rewriting claims 2, 4, 6 and 8-10 in independent form, Applicant respectfully traverses the prior art rejections for the reasons set forth below.

Claims 1-19 are all the claims presently pending in the application.

1. Claims 1, 3, 5, 7 and 11-19 stand rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Hermansson *et al.* (U.S. Patent No. 5,987,319). Applicant traverses the rejection of claims 1, 3, 5, 7 and 11-19 for at least the reasons discussed below.

To support a conclusion that a claimed invention lacks novelty under 35 U.S.C. § 102, a single source must teach all of the elements of a claim. *Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1379, 231 U.S.P.Q. 81, 90 (Fed. Cir. 1986). A claim is anticipated only if each and every element as set forth in the claim is found either expressly or inherently in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). A single source must disclose all of the claimed elements arranged as in the claim. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). A proper anticipation rejection requires that every element of the claim be found “in a single prior art reference.” *See In re Robertston*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950 (Fed. Cir. 1999). Thus, the cited reference must clearly and unequivocally disclose every element and limitation of the claimed invention.

Hermansson *et al.* is directed to resource allocation in cellular radio communication systems by taking into account a number of parameters defining the state of the system, thereby making the resource allocation more flexible. Among the parameters that Hermansson *et al.* take into account is the current channel quality (*see, e.g.*, col. 2 lines 47-49, col. 3 lines 36-38, col. 4 lines 27-29, col. 5 lines 40-47). However, Hermansson *et al.* only recall the techniques listed in the introduction of the present application, *i.e.*, using quality indicators such as C/I, BER, RXLEV (used as an indicator of BER), RXQUAL (used as an indicator of C/I). There is no

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teaching or suggestion in Hermansson *et al.* of determining a net bit rate transmitted on a radio link, and evaluating the quality of the radio link in accordance with the determined net bit rate, as recited in claim 1.

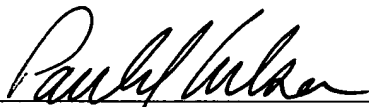
Based on the foregoing reasons, Applicant submits that Hermansson *et al.* fail to teach or suggest all of the claimed elements as arranged in claim 1. Therefore, under *Hybritech* and *Richardson*, Hermansson *et al.* clearly cannot anticipate the present invention as recited in independent claim 1. Thus, Applicant submits that claim 1 allowable, and further submits that claims 3, 5, 7 and 11-19 are allowable as well, at least by virtue of their dependency from claim 1. Applicant respectfully requests that the Patent Office withdraw the § 102(e) rejection of claims 1, 3, 5, 7 and 11-19.

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In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,


Paul J. Wilson
Registration No. 45,879

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

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